IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11895 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JITENDRA @ PAPPU KRISHNABAHADUR THAKUR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11895 of 2004

MR AMRISH K PANDYA for MS KU MISHRA for the Petitioner

MS PUNANI AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 06/12/2004

ORAL JUDGEMENT

Heard Mr Pandya for Ms K.U. Mishra for the petitioner and learned AGP Ms Punani for the other side.

2. By invoking the jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner - detenu has challenged the legality and validity of the order of detention No.PCB/PASA/142/2004 dated 18th May, 2004 passed against him by the Police Commissioner, Surat City, branding the petitioner as a bootlegger within the meaning of Section 2(b) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act).

3. The petitioner has challenged the order of detention on various grounds mentioned in the memo of the petition. The detaining authority, the Police Commissioner, Surat City, for recording the subjective satisfaction that the activities of the present petitioner are adverse to the maintenance of public order and has potentiality to disturb the public tranquility, has considered the effect of registration of the offence punishable under Section 66(1)(b)(e) and 165(e)(a) and 81 of the Bombay Prohibition Act. The petitioner was found involved in the offence where the investigating agency had recovered 522 bottles of Indian Made Foreign Liquor worth Rs.15,660 and a jeep car on 9th May, 2004. The detaining authority has also considered two statements placed by the sponsoring authority recorded on 12th and 13th May, 2004. Both these statements have been verified by the detaining authority on 17th May, 2004. The order of detention was passed on 18th May, 2004 as mentioned hereinabove. It is argued by Mr Pandya while assailing he validity of the order that the order of detention is not sustainable, that the same is passed mechanically and there were no sufficient reasons to record the subjective satisfaction by the detaining authority and to brand the present petitioner as a bootlegger within the meaning of Section 2(b) of the PASA Act because he has been found to be involved in one solitary case punishable under the Bombay Prohibition Act.

4. In view of the above stated facts and the facts emerging from the grounds of detention conveyed to the petitioner, the Court finds force in the submission of Mr Pandya. Considering the ratio of the decision of this Court in case of Sohanlal Vishnoi reported in 2004(2) GLR 1051 and in light of the ratio of the decision of this Court in case of Ranubhai Bhikhabhai Bharwad reported in 2000(3) GLR 2696, and more particularly the observations of this Court in paragraph 9 of the Ranubhai Bhikhabhai Bharwad case, the petitioner deserves to be set at liberty by allowing the petition. The petition is, therefore, allowed.

5 For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 18th May, 2004 passed by Commissioner of Police, Surat City, is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute. Direct Service is permitted.

[C. K.BUCH, J]

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